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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 91

RAY CASH,

Petitioner,

vs.

R. O. CULVER, State Prison Custodian,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

REPLY MEMORANDUM FOR THE PETITIONER, WITH APPENDIX

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This memorandum is filed solely as vehicle for the attached Appendix, whose relation to the case might not otherwise be apparent. The Appendix consists of that portion of the record of *Padgett* v. *State*, 53 So. 2d 106 (Fla., 1953), in which the accomplice witness Walden testified that Padgett helped him pick, case, and make getaway from the "Robbins" store, *ib.* 108.[1] We briefed *Padgett* as holding that Florida law prohibits other-crime testimony where as

[1] Copy of Appendix, certified by the Clerk of the Supreme Court of Florida, has been lodged with the Clerk of this Court.

here[2] no one except an accomplice testifies directly to the defendant's part in the crime charged (Petitioner's Brief, pp. 16-17).

Respondent, however, protests that we misread *Padgett*. He says that in *Padgett* not even the accomplice's testimony connected the defendant with the crime charged, and hence that what the Florida Court there said about other-crime testimony teaches nothing on the point of Florida accomplice law to which we cited that case (Respondent's Brief, pp. 8-10).

We present the Appendix to confirm what we thought the *Padgett* opinion made adequately clear, that the accomplice witness there, as here, did identify the defendant as participant in the crime charged.

Respectfully submitted,

IRWIN L. LANGBEIN
Counsel for Petitioner

January 9, 1959.

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[2] The petition at bar alleges, "• • • there was nothing that would connect Allen [the accomplice here] and the petitioner except Allen's word" (R. 4; Petitioner's Brief, p. 18).

APPENDIX

IN THE SUPREME COURT OF THE STATE OF FLORIDA

O. B. PADGETT, Appellant,

—v.—

STATE OF FLORIDA, Appellee.

Partial Transcript From Record on Appeal

I, Guyte P. McCord, Clerk of the Supreme Court of Florida, hereby certify that the following is a true copy of a portion of the original Record-on-Appeal in *O. B. Padgett* v. *State of Florida,* No. 21,366, decided by the Supreme Court of Florida June 12, 1951, reported 53 So. 2d 106, being an extract from the court reporter's minutes of the trial with marginal page references of that Record-on-Appeal:

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA, —vs.— O. B. PADGETT,	Breaking and Entering and Accessory Before the Fact

Trial held November 4th and 5th, 1949 in the Leon County Court House, Tallahassee, Florida before Honorable Hugh Taylor, Judge of said Court.

Appearances:

For the State: W. D. Hopkins, Esquire, State Attorney, Henry Morrison, Esquire, Assistant State Attorney.

For the Defendant: Orion Parker, Esquire, of Parker & Parker, Tallahassee, Florida, Clyde Atkinson, Esquire, of Atkinson & Atkinson, Tallahassee, Florida.

[fol. 31] DAVE WALDEN, Witness for the State, being duly sworn, testified as follows:

Direct examination.

By Mr. Hopkins:

Q. Please state your name?
A. Dave Walden.

* * * * * * *

Q. Do you know the defendant, O. B. Padgett, sitting over here?
A. Yes, sir.

* * * * * * *

[fol. 33] Now, did you plan specifically to rob Sam Robbins' store here in Tallahassee?
A. Yes, sir.
Q. Tell the jury, if you will, what plans were made and what groundwork you laid for that robbery.
A. Well, I just worked out the plans on it and went ahead and robbed it on a Sunday night.
Q. Who pointed out Sam Robbins' store to you?
A. Well, I was with Mr. Padgett whenever I looked it over and he showed me where it was.
Q. Did you go into the store at any time, Sam Robbins' store?
A. Yes, sir.
Q. What did you go in there and ask for?
A. The first time I went there, I went there and bought a coat and a hat.
Q. Were you satisfied with the case on that particular trip there?
A. I was satisfied with the inside but I come back later at night and looked it over.
Q. Went back later and looked it over again?
A. Yes, sir.
Q. When you sent back later and look the job over, what [fol. 34] was the occasion for going in there, or what did you ask for?

A. Well, the next time I went back I wanted to go upstairs so I could look the top of the building over and that's the only two times I went there in the daytime.

Q. What did you ask for, if you remember, so you could specifically get a look at the safe?

A. Well, buying these clothes I just maneuvered around the building in order to get a look at this safe. That's all I cared about seeing, outside the entrance and top; I didn't get to get up there the first time. I had to come back the second time.

Q. Did Mr. Padgett go there to the store with you on any other occasion other than the first time he carried you there?

A. Well, he didn't go in the first time. He did the second time. He went in with me too—so he could entertain the merchant so I would be free to look all around and go upstairs.

Q. Did you plan to rob it on a Saturday night before you actually did rob it?

A. Yes, sir.

Q. What went wrong that night and what night was it?

A. It was on a Saturday night and it happened that Mr. Padgett let the merchant there see him and got in a conversation with him so I thought it best to put it off after that.

Q. Why was Mr. Padgett to go by the store, Mr. Walden? Why was he to be near the store?

A. In order to watch for me.

Q. What kind of watching was he doing on that night, that Saturday night when you went up there?

[fol. 35] A. Well, to begin with, we went there early in order to see if he, when he closed up, if he carried the money to the bank or whether he took it home with him or not. He didn't do either one so we assumed he left it in the safe.

Q. Did you and Mr. Padgett follow Mr. Robbins far enough to see that he did not go by the bank?

A. Yes, sir.

Q. Did you have an automobile down here of your own?

A. No, sir.

Q. Whose car was it you followed Mr. Sam Robbins in that night?

A. In Mr. Padgett's car.

Q. Now, what did Mr. Padgett come out of Sam Robbins' store with on the night that you planned to rob it at first and thought you had better not because Padgett would be recognized as the last person in the store?

Mr. Atkinson: We object to that as a leading question.

The Court: Objection sustained.

Mr. Hopkins:

Q. What did Mr. Padgett do on this particular night that you say you went there first, had first planned to rob it on Saturday night?

A. Well, in the conversation he was going in the store and buy a jack from the lady in the store. I think it might have [fol. 36] been Mr. Robbins' wife.

Q. Is that the reason you put off robbing it that Saturday night?

A. Yes, sir.

Q. Now, when did you rob it? What night, day of the week, if you know, about what time?

A. It was on a Sunday night, I don't remember the date but it was around 10:00 o'clock, I reckon, I went in.

Q. Who selected the time of night to go in?

A. Well, it was Mr. Padgett's idea about that cause he was familiar with the town and the way the officers work here when they change shifts and one thing and another.

Q. Did he tell you they changed shifts about that time of night?

A. Yes, sir.

Q. Now, when you did rob it on Sunday night, who brought you down to Sam Robbins' place to make the robbery?

A. Mr. Padgett.

Q. What did he do while you were going in the place? Or what was his plan? I'll put it that way.

A. The plan was for him to stand out in front and watch for me temporarily while I went up the stairway and then after that he was to ride around, you know. See, I didn't want him to be seen there on the street.

Q. Now, how did you enter the building? How did you go about getting into Sam Robbins' place?

A. From the roof.

Q. How did you get up to the roof?

A. I went up the stairway three or four doors from the store; and the stairway is a stairway to an insurance office there and I went through a window out an adjoining building on the roof and walked down to where his store was.

[fol. 37] Q. And how did you get in the store from the roof?

A. I sawed a bar out of the window that put me in the second story, the storeroom in the back of the store.

Q. Then after you went in, what did you do?

A. Went down the stairway on the lower floor and robbed the safe and come back out.

Q. Any trouble to break it open?

A. No, sir.

Q. Have any tools?

A. Yes, sir.

Q. Where did you get the tools from?

A. I got them up around Padgett's premises.

Q. Where on Padgett's premises?

A. In his garage.

Q. Does he have a tool shed there?

A. Well, yes, sir, there's a tool shed; I say the garage. It was right beside the house, might be called a garage.

Q. All right, now, after you had robbed this safe, what did you do then? After you finished opening the safe and taking the contents out of Sam Robbins' store, what did you do?

A. I came back to where I came in on the roof and back down the stairway. The car was parked out in front of the stairway and I walked from there over to the car and got in.

Q. Who was in the car, if anybody?

A. Well, Padgett wasn't in it then. He was inside of one of the stores there down the street and I had to wait for him.

Q. Who was to give you the signal, if anybody, when you were to come out of the stairway?

[fol. 38] A. Padgett was supposed to give me the signal when to come out but he wasn't there.

Q. All right, now, after you robbed this safe and you and Mr. Padgett got back in the car, where did you go? What did you do?

A. Went out to his house and put the money there in his house.

Q. Where did you put the money in the house?

A. In his living quarters.

* * * * * * *

Clerk's Certificate to foregoing transcript omitted in printing.